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SENATE

REPORT
No. 97-332

AUTHORITY TO CONVEY CERTAIN NATIONAL FOREST SYSTEM LANDS

APRIL 19 (legislative day, APRIL 13), 1982.—Ordered to be printed

Mr. HELMS, from the Committee on Agriculture, Nutrition, and Forestry, submitted the following

REPORT

[To accompany S. 705]

The Committee on Agriculture, Nutrition, and Forestry, to which was referred the bill (S. 705) to authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

SHORT EXPLANATION

S. 705, as amended, would authorize the Secretary of Agriculture to convey by quitclaim deed certain small parcels of national forest system lands the sale or exchange of which is not practicable under any other authority of the Secretary. The bill would specifically exclude from conveyance under its provisions any lands within the National Wilderness Preservation System. The lands which may be conveyed through sale, exchange, or interchange are (1) parcels of 40 acres or less which are interspersed with or adjacent to mineral patents; (2) parcels of 10 acres or less which are innocently encroached upon by persons who relied in good faith on an erroneous survey or other land description; and (3) road rights-of-way no longer needed by the United States. Parcels that may be conveyed under the bill cannot exceed $150,000 in value. The consideration accepted by the Secretary must be at least equal to the value of any lands being sold or exchanged, or of approximate value to the value of any lands being interchanged by the Secretary.

In addition, the bill would require that persons to whom land is conveyed under this authority bear the costs incident to the conveyance and, in the case of the conveyance of any right-of-way, reimburse the

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United States for the value of any improvements made to the right-of-way by the United States. If determined to be in the public interest the Secretary would have authority to waive such costs and reimbursement. In determining the value of land to be conveyed, the bill would authorize the Secretary to allow credit, if consistent with the public interest, for improvements made to the land by any person other than the United States.

The bill would provide that the use of rights-of-way conveyed under this authority would be controlled by State and local law. The Secretary would be authorized to issue regulations as necessary to carry out the provisions of the act. The bill would also authorize exchanges of national forest system lands with State and local government entities where cash equalization of payment by the State or local government is made.

Committee Amendment

The committee amendment to the text of the bill strikes out all after the enacting clause and inserts a substitute.

As introduced, S. 705 would authorize the Secretary of Agriculture, when in the public interest, to sell or exchange, by quitclaim deed, all right, title, and interest of the United States in certain national forest system lands (specifically excluding any lands within the National Wilderness Preservation System), as follows: (1) parcels of 40 acres or less interspersed with or adjacent to mineral patents, which the Secretary determines are not subject to efficient administration, and which have a fair market value of not more than $150,000; (2) parcels of 10 acres or less that are encroached upon by improvements occupied or used by persons who in good faith, and without advance notice that the improvement would encroach upon the parcel, relied upon an erroneous Federal survey, title search, or other land description; and (3) road rights-of-way that are substantially surrounded by lands not owned by the United States and that are no longer needed. As consideration for such lands the Secretary could accept other land, interests in lands, or cash, equal in value to the fair market value of the land.

In addition, the bill as introduced would require that persons receiving any land bear reasonable costs incident to such conveyance, except that the Secretary could waive these costs if in the public interest. Persons to whom any rights-of-way are conveyed must reimburse the United States for the value of any improvements thereon, and any such conveyance would not permit the use of any right-of-way in a manner inconsistent with State or local law. The Secretary would be authorized to issue necessary regulations. The current authority to allow cash equalization of payment in an exchange of national forest system lands with a school district would be extended to include State and local government entities.

The committee amendment to S. 705—

(1) Moves the definitions to the first section and adds definitions of the terms "interchange" and "Secretary";

(2) Deletes the requirement that the Secretary insert various terms and conditions in the deeds of land conveyed;

(3) Adds a new category of land transfer—an "interchange"—which in essence is a simplified form of exchange that would involve the use of procedures, such as the use of approximate

values rather than exact appraised values, designed to reduce the time and cost of completing the land transfer;

(4) Extends the $150,000 limitation applicable to mineral fractions, to all tracts covered by the bill;

(5) Extends to provision allowing the conveyance of parcels up to 10 acres where encroachment has resulted from good faith reliance on erroneous Federal surveys to include erroneous non-Federal surveys.

(6) With respect to determining the value of parcels to be conveyed, adds a provision to grant the Secretary discretion to allow credit for the value of any improvements to the land made by any person other than the government;

(7) With respect to the conveyance of rights-of-way, adds authority for the Secretary to waive reimbursement for improvements made to the rights-of-way by the United States, if determined to be consistent with the public interest;

(8) Adds a requirement to define by regulation the meaning of "approximate value"; and

(9) Rephrases the amendment to the Act of December 4, 1967, to clarify that exchanges of National Forest System land where cash equalization of payment is made are authorized with State and local government entities as well as with public school districts.

Purpose and Need

There are an estimated 200,000 tracts of Federal land the size, shape, or location of which makes them impracticable to administer efficiently as units of the national forest system. They are often isolated or too small to justify the expense and time required in land management activities. They may be occupied in trespass by adjoining landowners. These tracts can generally be grouped into one of three readily defined categories: (1) irregularly shaped tracts of 40 acres or less that are interspersed with or adjacent to mineral claims, (2) tracts of 10 acres or less that are encroached upon by private parties because of surveying titling, or land description errors, or (3) road rights-of-way that are owned by the United States but are no longer needed. Each type of tract is more specifically described below.

Mineral tracts.—The mineral fractions were created 75 to 100 years ago through patenting of mining claims on the Western public lands. Because of the way of claiming occurred, the residual tracts owned by the Federal Government are of an infinite variety of sizes and shapes. Some may be as small as 0.2 acre. Many of the intermingled, unpatented public lands came under the administrative responsibility of the Forest Service upon creation of the national forests but are of such small size or are located in such a way as to be of little practical use for National Forest System purposes.

Most of the adjoining mineral patents are no longer held for their mineral values. They may support ranching, industrial plants, irrigation sites and water power facilities, utility lines, roads, and intensive recreation sites. Recently, some of the patented lands have been subdivided into vacation homesites.

Encroachment.—Innocent occupancy, or encroachment, upon national forest system lands occurs when improvements are constructed

or are being used on a parcel of land acquired in good faith by a private party which is later found to overlap Federal land. This usually happens as a result of an improper property line survey, by either private or public surveyors, or an error in the title or land discreption. While there are a few known instances where Federal survey errors are the cause of such encroachments, the great bulk of the title claim cases existing on national forest system lands involves problems resulting from private surveys. The error giving rise to the encroachment is frequently not discovered until the public land is later surveyed and marked. The resulting trespass is considered to be in good faith if the private party had no knowledge that the improvements would encroach upon the Federal lands. The claims generally involve parcels of small size, frequently less than one acre, but constitute a major portion of the estimated 50,000 title claim cases existing on national forest system lands throughout the United States. There would be a distinct advantage to the Government to have the possibility of litigation removed from these potential title claim cases.

Road right-of-way.—These are narrow strips of Federal lands that pass through private land. Most were created as exceptions to homestead patents in order to provide access to the homesteaded area or to remaining Federal lands. Some were purchased by the Government in conjunction with the work of the Civilian Conservation Corps. Many of the roads no longer exist or were never built, and the rights-of-way are no longer needed for national forest system purposes. The average size of these rights-of-way is two acres. They occur in the West, especially in Montana, Wyoming, Idaho, and Arizona.

These three types of small, irregularly shaped tracts of national forest system land create problems for both the Federal land manager and adjacent private property owners. Administrative remedies, while generally applicable, are not in most cases a desirable solution. A special use permit may be granted. The permit acknowledges the occupancy and allows it to continue for a specified period. This period is usually sufficient only to amortize any improvements to the property. The permit is then cancelled and the improvements must be removed. A land exchange may also be made under which the Secretary may accept lands in exchange for the small tracts of the type described above. However, individual exchanges under current authority are lengthy and expensive. They are not usually satisfactory in the case of small acreages and irregularly shaped tracts.

Private legislation has been successful in only a small number of cases. It is a difficult, time-consuming and costly process with uncertain results. A general legislative solution is thus considered preferable and appears to be the only realistic solution to the massive backlog of these types of title claim cases. S. 705, as amended would provide the Forest Service with authority to administer an efficient system for resolving these claims in a manner consistent with protecting the public interest.

The proposed legislation would also address a different, but related, matter involving national forest system lands. The act of December 4, 1967, authorizes exchanges of national forest system lands with public school districts where the lands offered in exchange do not equal the value of the Federal lands. In such cases, the act authorizes the

Secretary to accept cash from the public school district to equalize the value of the exchange. Broadening this cash equalization feature to include State, county, and municipal governments would recognize that these entities may have the same difficulty in making equivalent land exchanges as do public school districts and would allow for the completion of desirable land exchanges where sufficient suitable land is not available. In addition to specifically indentified land exchanges, there are approximately '0,000 cases where these governmental units occupy a tract of national forest system land under a special use permit in order to carry out a specific function, such as highway maintenance facilities or forest fire lookout towers. Many of these could appropriately be transferred to the local governmental unit under a cash equalization exchange program.

Committee Consideration

A. HEARINGS

The Subcommittee on Forestry, Water Resources, and Environment, chaired by Senator Hayakawa, held a hearing on S. 705 on October 22, 1981.

Senator Domenici, the sponsor of S. 705, as well as representatives of the forestry industry, the U.S. Department of Agriculture, and landowners testified.

Senator Domenici testified that the U.S. Forest Service is currently involved in thousands of boundary disputes with private landowners. The disputes have come about due to a variety of reasons, including mistakes by Federal agencies, technological advances in equipment, and methods of conducting land surveys. He indicated that many of the landowners, especially those in New Mexico, have purchased land in good faith only to find that the Federal Government now lays claim to some of that land. He further testified that the overwhelming number of these claim cases involve disputes of land parcels less than 10 acres in size and that S. 705 would provide the Forest Service with the flexibility to handle these small boundary diputes.

The Chief of the Forest Service testified that the Department of Agriculture supports the bill but recommended that various amendments be incorporated in it for clarification of certain provisions and to provide additional authority and limitations in connection with the authorized land conveyances.

Other witnesses testified to the effect that while existing legislation outlines the steps necessary to execute public land transfers to States, municipalities, and private individuals, the current law does not sufficiently address the growing problem of small land tract disputes.

Several examples of these situations were described with the need to seek enactment of private relief bills being cited as the only existing alternative to the current administrative authority. Some witnesses indicated support for the adoption of S. 705 and characterized it as presenting an important addition to current authority for the Forest Service. One witness also proposed several amendments to the bill which were described as technical and clarifying in nature.

B. SUBCOMMITTEE ACTION

Following the hearings a subcommittee print of S. 705 was prepared incorporating many of the amendments proposed by the Department of Agriculture and another witness. The subcommittee print was considered by the members of the Subcommittee on Forestry, Water Resources, and Environment and the bill as amended was reported to the full committee.

C. COMMITTEE MARKUP

On March 31, 1982, the full committee met in open session and considered S. 705, as amended, by the subcommittee.

At Chairman Helms' request the provisions of the subcommittee print were explained to the committee members. In addition, a technical amendment to the print was described. As reported by the subcommittee the bill would authorize the Secretary of Agriculture, in determining the value of any land to be conveyed under the act, to exclude the value of improvements made to the land by the person to whom the land is to be conveyed. The amendment would expand that provision to authorize the Secretary to take into consideration, when making such a determination, the value of improvements to the land by any person other than the Government.

Senator Hayakawa, chairman of the subcommittee that reported the bill, indicated his support for the amendment. The amendment was adopted without objection.

With a majority of the members present, the committee then unanimously agreed by voice vote to report S. 705, as amended, to the Senate.

Section-by-Section Analysis

Section 1 defines the terms "person", "interchange", and "Secretary". The term "person" includes States or any political subdivisions or entities thereof, such as county and municipal governments, independent school districts and similar entities. The term "interchange" means a land transfer involving the change of titles to or interests in lands between the Secretary and another person under such regulations as the Secretary may prescribe.

Section 2 authorizes the Secretary of Agriculture, when in the public interest, to sell, exchange, or interchange by quitclaim deed, all right, title, and interest, including the mineral estate, of the United States in the national forest system lands described in section 3. As consideration for such lands the Secretary is authorized to accept other lands, interests in lands, or cash, or any combination thereof, which in the case of a sale or exchange is at least equal in value to the lands being conveyed by the Secretary. In the case of conveyance by interchange the consideration must be of approximate value to the lands being conveyed by the Secretary.

Section 3 identifies the lands which may be sold, exchanged, or interchanged by the Secretary under section 2 as those the sale or exchange of which is not practicable under any other authority of the Secretary, which the Secretary has determined to have a value of not more than $150,000, and which are (1) parcels of 40 acres or less interspersed with or adjacent to mineral patents and which the Sec-

retary has determined, because of size and location, are not subject to efficient administration; (2) parcels of 10 acres or less which are encroached upon by improvements occupied or used under claim or color of title by persons to whom no advance notice was given that the improvements encroached or would encroach upon such parcels, and who in good faith relied upon an erroneous survey, title search, or other land description indicating that there was no such encroachment; or (3) road rights-to-way reserved or acquired which are substantially surrounded by lands not owned by the United States and which are no longer needed by the United States subject to the first right of abutting landowners to acquire the rights-of-way.

Section 4 requires that persons to whom land is conveyed must bear all reasonable costs, as determined by the Secretary, of administration, survey, and appraisal incidental to the conveyance. In addition, any person to whom a right-of-way is conveyed is required to reimburse the United States for the value of any improvements to the right-of-way made by the United States. In cases where the Secretary determines it would be consistent with the public interest to do so, the Secretary is authorized to waive payment of such incidental costs or reimbursement for such improvements to rights-of-way. This section also provides that, in determining the value of any lands or interest in lands to be conveyed, the Secretary may exclude from such determination the value of any improvements to the lands made by persons other than the Government, when the Secretary determines that such exclusion would be consistent with the public interest.

Section 5 provides that conveyance of any road rights-of-ways shall not be construed as permitting any designation, maintenance, or use of the rights-of-way for road or other purposes except to the extent permitted by State or local law.

Section 6 directs the Secretary to issue regulations to carry out the provisions of the bill, including specification of: (1) the criteria to be used in determining what constitutes the public interest; (2) the definition of and the procedure for determining "approximate value"; and (3) factors relating to location or size to be considered in determining the lands interspersed with mineral patents that are eligible to be conveyed under the bill.

Section 7 provides that nothing in the bill shall authorize conveyance of Federal lands within the National Wilderness Preservation System.

Section 8 amends the act of December 4, 1967, to authorize the Secretary to accept cash equalization payments, in connection with exchanges of national forest system lands, by State, county, or municipal governments where the lands offered in exchange do not equal the value of the Federal lands. Presently, that act only authorizes cash equalization payments in connection with exchanges with public school districts.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact that would be incurred in carrying out S. 705, as amended.

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I.

S. 705 is not a regulatory measure in the sense of imposing Government established standards or significant economic responsibilities on private individuals and businesses. Conveyance of Government land to private parties, or to State, county, or municipal governments under the legislation would be voluntary. Furthermore, there would be significant advantages expected to accrue to the private entities affected by the legislation in providing for the resolution of title claims through expedited administrative actions rather than through litigation or private relief legislation. Upon adoption of regulations by the Secretary establishing the procedures to be followed in making conveyances, the affected private entities would be free to choose whether or not to enter into a sale, exchange, or interchange with the Secretary.

II.

Enactment of the bill would not affect the personal privacy of persons acquiring the national forest system lands.

III.

Additional Federal paperwork would result from enactment of the bill; however, the direct increase is not expected to be large and may be partially or wholly offset by indirect paperwork reductions. Administrative procedures to govern the application of the bill's provisions would be prepared to guide Department personnel. New regulations to implement the administrative procedures authorized by the bill would be required. Each conveyance would require the preparation of necessary legal papers to effect the transfer of ownership. On the other hand, enactment of the bill is anticipated to have the indirect effect of decreasing paperwork that would be required in connection with the administration of these lands if they were to remain in Federal ownership and reducing the number of claims to be resolved through formal dispute procedures and court litigation.

Administration Views

In a letter to Chairman Helms, dated October 21, 1981, from John R. Block, Secretary, U.S. Department of Agriculture, the Secretary recommended adoption of S. 705 by the committee with certain amendments. The Secretary's letter reads as follows:

Department of Agriculture,
Washington, D.C., October 21, 1981.

Hon. Jesse Helms,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: As you requested, here is our report on S. 705, a bill to authorize the Secretary of Agriculture to convey certain National Forest System land, and for other purposes, and on S. 160, a bill to authorize the Secretary of Agriculture to convey certain National Forest System lands, under specified conditions, to direct the

Secretary of the Interior to certify survey monuments within one hundred and eighty days, and for other purposes.

The Department of Agriculture recommends that S. 705 be enacted with our proposed amendments in lieu of S. 160.

S. 705 would authorize the Secretary of Agriculture to sell or exchange certain National Forest System lands at fair market value when the Secretary determines it to be in the public interest. A quitclaim deed would convey the land sold or exchanged and would contain terms, covenants, conditions and reservations necessary to protect the public interest, including public access to other National Forest System lands. Any conveyance could be made to a State or political subdivision of a State as well as to private parties.

The lands which would be sold or exchanged are of three types: (1) tracts of 40 acres or less interspersed with or adjacent to patented mineral claims which cannot be efficiently administered and which have a fair market value of not more than $150,000; (2) parcels of 10 acres or less which are encroached upon by improvements occupied or used by persons who relied upon an erroneous Federal survey, title search or land description and who had not been given advance notice that their improvements would encroach upon the Federal land; or (3) road rights-of-way, either reserved or acquired, substantially surrounded by privately owned lands and which are no longer needed by the United States.

S. 705 would require persons receiving these lands to bear the costs of conveyance unless waived by the Secretary. Conveyance of road rights-of-way would require reimbursement to the United States by the recipient for the value of any improvements. The abutting landowners would be given the first opportunity to acquire the road rights-of-way. The bill would prohibit conveyance of any Federal lands within the National Wilderness Preservation System.

S. 160 is a more limited bill and would only address a small part of the concerns on which S. 705 is based. We have included, as part of our supplemental statement, a detailed analysis of S. 160 and our reasons for supporting S. 705 with amendments rather than S. 160.

S. 705 would provide authority to convey three types of small, irregularly shaped tracts of National Forest System land. These are typically separate, isolated units having special management problems which impair efficient administration. Present authorities, including the General Exchange Act of March 20, 1922, are not adequate to handle the unique nature of these tracts. Administrative remedies, such as special use permits, do not provide a satisfactory long-term solution. S. 705, with the amendments we recommended, would provide authority to more efficiently administer National Forest System lands.

The mineral fractions are residual Federal lands remaining after the patenting of mineral claims in the western States over the last century. Due to the manner in which the claiming occurred, the residual lands are of an infinite variety of sizes and shapes. Many of these lands came under the administrative responsibility of the Forest Service upon creation of the National Forests. Most of these lands are no longer held for their mineral values and are of little practical use for National Forest System purposes. We believe that the $150,000 limitation imposed by S. 705 should apply not only to mineral frac-

tions but to the other two types of tracts as well. We also believe the term "mineral patents" should be clarified to refer to those lands transferred out of Federal ownership under the mining laws.

Encroachment, or good faith trespass, upon National Forest System land occurs when improvements are constructed or are being used on a parcel of land acquired in good faith by a private party but which is later found to overlap Federal land. This overlap may occur due to an improper property line survey or an error in the title or land description. This has happened when private lands adjoining public lands are subdivided and sold. The trespass would be considered good faith if the private party had no knowledge that the improvements would encroach upon the Federal lands. The bill would limit these cases to those caused by erroneous Federal surveys. We believe this is unnecessarily limiting and would not allow us to deal with cases where erroneous private surveys cause encroachment. There are few known instances where a Federal survey error led to encroachment. On the other hand, there are an estimated 50,000 title claim cases existing on National Forest System lands—a large number of which involve good faith trespass due to faulty private surveys. These occur throughout the United States. These are generally of small size, most involve less than 1 acre. We recommend that S. 705 be broadened to include encroachment cases that occur as a result of private surveys. We believe that such cases should be limited to a maximum size of 5 acres. This limit would encompass about 95 percent of the cases. Cases involving larger tracts should require more detailed consideration before disposal.

The road rights-of-way exist as narrow strips of Federal land through private land. Most were created as exceptions to homestead patents in order to provide access to the homesteaded area or to the remaining public lands. Some were purchased by the Government in conjunction with the work of the Civilian Conservation Corps. Many of the roads no longer exist or were never built. The average size of the strips is 2 acres. They occur in the West, especially in Montana, Wyoming, Idaho and Arizona.

We also wish to offer an amendment that would broaden the scope of the bill to include a different type of land transfer. This involves the interchange of land and would be in addition to the bill's provision to sell or exchange certain National Forest System lands. Interchange as proposed here would be a special form of land transfer similar to exchange in which, for example, a landowner who might be involved in an occupancy trespass situation on adjoining Federal lands, could agree with the Federal Government to interchange titles to the small parcel of Federal land being occupied and a similar parcel of private lands which he owns. The simple transaction, with conveyances at approximate value, would clear up the encroachment situation and would avoid the more costly and time consuming process normally associated with exchange. The expense to the landowner would be the cost of survey, if any, and deed preparation and filing. We would envision interchange as a supplement to the regular land exchange process, applicable to some of the cases encompassed by S. 705.

We also propose an amendment that would require the Secretary to consult with the Secretary of the Interior when conveying National Forest System lands under the provisions of this bill that contain

leasable minerals in known or designated energy and mineral resource areas.

The Secretary would be directed to issue regulations to implement the bill, including specification of what constitutes the public interest and guidelines relating to disposal of mineral fractions. We recommend this direction be broadened to require a definition of and the process for determining "approximate value."

Section 5 of S. 705 would permit the Secretary of Agriculture to use the provisions of the Act of December 4, 1976, (81 Stat. 531) to carry out exchanges authorized by the bill. This broadening of the 1967 Act is apparently intended to authorize exchanges of National Forest System land with State and local government entities in addition to the present authority for public school districts where cash equalization of payment by the local government is made. The section's intent is not clear and we propose an amendment that more clearly states its desired purpose. The authority provided by this section would not be limited to the specific types of National Forest System lands encompassed by S. 705. All land exchanges with States, counties and municipal governments, in addition to those with public school districts, would be affected by this section. We suggest the section be moved to the end of the bill to indicate this broader applicability.

The bill does not address the question of surveys of the tracts to be conveyed. Surveys of certain National Forest System lands covered by S. 705 would be carried out by the Department of the Interior, Bureau of Land Management. The Department of Agriculture, Forest Service, may perform certain of these surveys through authority delegated by the Bureau in a March 1980 Memorandum of Understanding.

Our recommended amendments are shown in the enclosed supplemental statement.

No additional appropriations would be required to administer the provisions of S. 705 nor would additional personnel be needed.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

JOHN R. BLOCK,
Secretary.

Enclosure.

USDA SUPPLEMENTAL STATEMENT, S. 160/S. 705

ANALYSIS AND DISCUSSION OF S. 160

S. 160 would authorize the Secretary of Agriculture to convey under specified conditions certain National Forest System lands to private parties when determined to be in the public interest. Federal lands which would be conveyed are limited to parcels of 5 acres or less which are encroached upon by improvements placed there by private parties who had not received advance notice that the encroachment would occur. Further, the private party's encroachment upon the Federal land was caused by reliance on either an erroneous Federal land survey or an uncertified Federal survey marker. Section 2 of the bill requires that all monuments established through survey of

the public lands by the Department of the Interior or an agency designated by that Secretary to make such surveys (which we would interpret to include the Forest Service) be certified within 180 days after monumentation occurs. Certification would involve meeting all requirements and conditions for survey and monumentation and filing appropriate information in the proper land office.

It is our understanding that introduction of S. 160 was prompted by a specific case on the Lincoln National Forest at Cloudcroft, New Mexico. The Bureau of Land Management, acting at the request of the Forest Service, began a resurvey of a portion of the National Forest boundary in 1967, established property lines and erected corner monuments to replace those of the public land survey established in the 19th century but not found at the time of resurvey. This survey was temporary in that it was not recorded and the monumentation not certified. Ten years later, the Bureau of Land Management, seeking to complete the 1967 survey, found the original survey monuments which were in a different location than those of the 1967 survey. The Federal surveyors then removed the 1967 survey monuments. In the 1967–1977 period, however, private surveyors used the temporary, uncertified monuments to survey private lands adjoining the National Forest Boundary. These surveys were the basis for subdivision and sale of the private lands. Subsequently, privately owned improvements have been erected on this land which are now considered to be encroaching upon Federal land.

The problem to which the bill is directed is real but of very limited application. There are very few known instances where an incomplete Federal land survey has caused an incorrect private survey and subsequent encroachment upon Federal land. Errors in private surveys which lead to encroachment on Federal land by private landowners are of a far more common occurrence. We estimate that of the 50,000 title claim cases on National Forest System lands, a major portion involve good faith occupancy due to errors in private surveys, land descriptions or titling. S. 705, if amended as we recommend, is directed at this larger problem, and would be of much greater value, we believe. It would encompass the type of situation to which S. 160 is directed. It would enable us to expeditiously resolve, through administrative means, these problems. At present such problems require the issuance of special use permits or private relief legislation. We recommend enactment of S. 705 with our amendments in lieu of S. 160.

RECOMMENDED AMENDMENTS TO S. 705

1. On page 1, line 8, change the semicolon and insert the following proviso:

"*Provided*, That the Secretary shall consult with the Secretary of the Interior prior to conveying leasable minerals in known or designated energy and mineral resource areas;".

2. On page 2, line 18, delete "mineral patents" and insert "lands which have been transferred out of Federal ownership under the mining laws".

3. On page 2, line 20, substitute a semicolon for the comma after "administration" and delete the remainder of clause 1 of section 2. On line 16, after "Secretary", insert ", which have a value as determined by the Secretary of not more than $150,000,".

4. On page 3, line 1, delete "ten" and insert "five".

5. On page 3, line 6, delete "Federal".

6. On page 3, line 17 substitute a period for the comma following "Secretary", delete "except" and insert "The Secretary may,". Move the sentence beginning on line 20 and ending on line 24 to line 17 to follow "Secretary". On line 19 insert a comma after "interest" and delete "to". On line 20 substitute a comma for the period after "person" and insert "or reimbursement for the value of improvements to rights-of-way otherwise required by this section."

7. On page 4, move section 5 to the end of the bill, renumber as section 8, and revise as follows—

"SEC. 8. The Act of December 4, 1967, (81 Stat. 531) is amended by inserting before the phrase 'public school district' wherever it appears, and before the phrase 'public school authority' the second time it appears, the words 'State, county, municipal government or'."

Renumber sections 6, 7, and 8 as sections 5, 6, and 7.

8. On page 4, line 12, insert "(a)" after "Act,", change the period to a comma at the end of the sentence and add the following new subsection:

"(b) the term 'interchange' means a land transfer in which the Secretary may exchange titles with a period to land in their respective ownerships, subject to the discretion of the Secretary under such regulations as the Secretary may prescribe as to appraisal, survey, notice, and other procedures applicable to exchanges."

To insure consistency between this amendment and other provisions of the bill, the following technical changes should be made:

—On page 1, line 6, insert a comma after "sell", delete "or" and insert "or interchange" after "exchange,".

—On page 2, line 1, insert a comma after "sold", and on line 2 delete "or" and insert "or interchanged," after exchanged".

—On page 2, lines 4–5, delete the words "equal in value to the fair market value of the lands including the mineral estate sold or exchanged," and insert "which, in the case of conveyance by sale or exchange, is at least equal in value, including the mineral estate, or, in the case of conveyance by interchange, is of approximate value, including the mineral estate, to the land being conveyed". On page 1, line 7 insert ", including the mineral estate," after "interest".

—On page 2, line 14 insert a comma after "sold", delete "or" and insert ", or interchanged" after "exchange". Also on line 14 insert a comma after "sale" and delete "or" the second time it occurs. On line 15 insert ", or interchange" after "exchange".

9. On page 4, line 20 renumber clause (2) as clause (3). On line 19, delete "and" and insert a new clause (2) as follows:

"(2) the definition of and the procedure for determining 'approximate value; and'."

Cost Estimate

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee estimates there would be no cost to the Government as a result of the enactment of S. 705. In accordance with the Congressional Budget Act of 1974, the Congressional Budget Office prepared the following cost estimate:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., April 13, 1982.

Hon. Jesse A. Helms,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 705, a bill to authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes, as ordered reported by the Senate Committee on Agriculture, Nutrition, and Forestry, March 31, 1982.

This bill authorizes the Secretary of Agriculture to sell, exchange, or interchange certain small parcels of National Forest Service land. The lands involved include parcels valued at a maximum of $150,000 which are: forty acres or less and are inefficient to manage because of location or size: ten acres or less and have been innocently encroached upon due to erroneous non-federal surveys; and unnecessary federally reserved rights-of-way surrounded by non-federal lands. Based on information from the National Forest Service, it is estimated that the value of the lands that will be sold or exchanged by the end of fiscal year 1986 is approximately $1.9 million (in current prices). Assuming the transactions will occur over the next five years and that 90 percent of these transactions are land sales (and 10 percent are land exchanges), receipts to the federal government resulting from enactment of this legislation will be approximately $0.2 million in fiscal year 1982, $0.3 million in fiscal year 1983, $0.6 million in fiscal year 1984, $0.6 million in fiscal year 1985, and $0.7 million in fiscal year 1986.

The bill also authorizes states, counties, and municipal governments to equalize land values with cash for proposed land exchanges with the Secretary of Agriculture where the parcels involved do not exceed eighty acres. Based on information from the National Park Service, net receipts to the federal government that will be realized as a result of enactment of this title will be less than $0.5 million per year.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Raymond Scheppach
(For Alice M. Rivlin).

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

Act of December 4, 1967

AN ACT To facilitate exchanges of land under the Act of March 20, 1922 (42 Stat. 465), for use for public schools, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever an exchange of land is proposed by a *State, county, or municipal government or* public school district or other public school authority under the Act of March 20, 1922 (42 Stat. 465), as amended (16 U.S.C. 485, 486), or other authority under which the Secretary of Agriculture is authorized to exchange national forest lands or other lands administered by the Forest Service, if the *State, county, or municipal government or* public school authority proposing the exchange has insufficient land to offer, the exchange may be completed upon deposit with the Secretary of Agriculture of a portion or all of the value of the selected land. Any amount so deposited shall be covered into a special fund in the Treasury which when appropriated shall be available until expended by the Secretary of Agriculture for the acquisition of lands in the same State as the selected lands and which are determined by him to be suitable for the same purposes as the selected lands. Lands so acquired shall have the same status and shall be subject to the same laws, regulations, and rules as the selected lands.

The provisions of this Act shall not be applicable to the conveyance in exchange of more than eighty acres to any one *State, county, or municipal government or* public school district or other public school authority.

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